

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2047

United States of America,

Appellee,

v.

Ruben Perales-Avila,

Appellant.

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* Appeal from the United States
* District Court for the
* Southern District of Iowa
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* [UNPUBLISHED]
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Submitted: November 7, 2003

Filed: December 8, 2003

Before RILEY, McMILLIAN, and SMITH, Circuit Judges.

PER CURIAM.

Ruben Perales-Avila appeals from the final judgment entered in the District Court¹ for the Southern District of Iowa after he pleaded guilty to illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a), and false representation of citizenship, in violation of 18 U.S.C. § 911. The district court sentenced Perales-Avila to concurrent terms of 71 months and 36 months imprisonment and to concurrent supervised release terms of 3 years and 1 year. On appeal, counsel has moved to

¹The Honorable Charles R. Wolle, United States District Judge for the Southern District of Iowa.

withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erred in declining to depart downward based on cultural assimilation. For the reasons discussed below, we affirm the judgment of the district court.

We do not review a sentencing court's denial of a downward departure motion where, as here, there is no indication the court believed it lacked the authority to depart. See United States v. Lopez-Arce, 267 F.3d 775, 784 (8th Cir. 2001).

We have reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), and we find no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm the judgment of the district court.
